

**TINA CLARK,**

**Petitioner,**

**V.**

**THE HONORABLE MARK A. KARL,  
JUDGE OF THE CIRCUIT COURT  
OF MARSHALL COUNTY, WEST  
VIRGINIA, 2<sup>nd</sup> JUDICIAL DISTRICT,**

**Respondent.**

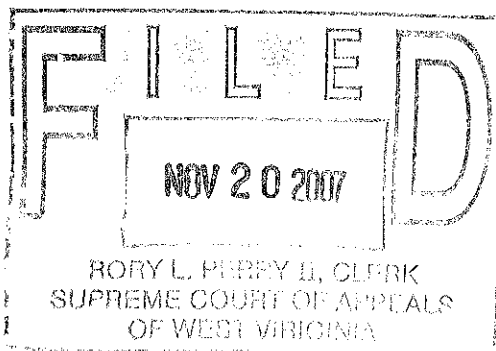
SUPREME COURT NO. 33808

**UNDERLYING CIVIL ACTION  
NO. 03-C-56K  
(JUDGE MARK A. KARL)**

# PETITION FOR WRIT OF MANDAMUS

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*Attorneys for the Petitioner*



Petitioner Tina Clark respectfully moves this Honorable Court for the issuance of the extraordinary Writ of Mandamus against the Respondent, Judge Mark A. Karl, the Circuit Court Judge of Marshall County, West Virginia. This Court should grant Mandamus relief based on the Respondent's unreasonable delay in granting a trial to adjudicate the Petitioner's civil action, *Tina Clark v. Valley National Gases, Inc.*, no. 03-C-56K.

This suit commenced on March 3, 2003, and was first scheduled for trial on September 13, 2004. Despite the fact that the Petitioner has never sought a continuance, this action was continued on seven separate occasions – once because of the Defendant's improper removal, once because one of the Defendant's witnesses scheduled an elective surgery during trial, once when the Defendant rejected a proposed trial date, and four times due to the Circuit Court's scheduling conflicts.

The last trial date in this matter was August 15, 2007. On Friday, August 10, 2007, Respondent called the parties to disclose a criminal matter was set to start on August 13 and that it might last several days. Respondent then canceled the August 15, 2007 trial, and advised the parties to contact his office the following week for a new trial date. Upon contacting the Court the following week, plaintiff's counsel was advised that the criminal matter had been resolved via a plea agreement prior to August 15, 2007. On August 21, 2007, Respondent offered two new trial dates, either the week of Thanksgiving 2007, or March 24, 2008. Defense counsel rejected these dates, and no new dates have been given.

Upon the culmination of these events, and without any assurance of a trial date in the near future, the Petitioner, on August 23, 2007, sought from the Respondent the extraordinary Motion to Transfer her case to another court, with the hopes that some judge would grant her the right to adjudicate her claim without any unreasonable delays. The Defendant filed a Response to the Petitioner's Motion to Transfer, and the Petitioner filed a Sur Reply. On September 26, 2007, the

parties appeared before the Respondent and orally argued the Motion to Transfer. Per Respondent's instruction, the parties submitted proposed Orders regarding the Motion by mid October, 2007. As of the filing of this petition, the Respondent has not issued a ruling on the Motion for Transfer.

Regardless of the cause, the delays in the trial have greatly prejudiced the Petitioner. For instance, the Defendant admitted to smashing critical computers with a sledgehammer (the Respondent has attempted to address this issue with a spoliation instruction). Additionally, witnesses have become unavailable or left the area and the Defendant company has been sold to an out of state interest for \$240 million. Further, one by one, experts have been forced to testify via video deposition due to an inability to be available for each new date – this has resulted in the early presentation of the Petitioner's case. The Petitioner has also incurred substantial expense because each delay requires that experts re-review their files and counsel incur time and expense in preparing for trial six times. The Petitioner has also been subjected to the emotional stress of preparing to go to trial six separate times. The delay of the instant case has also resulted in the delay of Petitioner's bad faith and abuse of process case filed against the Defendant and its insurance carriers in March of 2005.

The Petitioner has been denied her day in court, to hold the Defendant accountable for its actions, for over four years. Moreover, as a result of the numerous and unnecessary continuances, the Petitioner has begun to lose faith in the judicial system; and particularly, the Petitioner has lost faith in her ability to obtain any adjudication in the Respondent's court.

The Petitioner has repeatedly asked for a trial date. She has filed Motions for Trial Dates, Motions for Preference on the Trial Docket and a Motion for Transfer - but there is still no trial date in sight. No other legal remedy is available to the Petitioner and without the aid of this Court the

Petitioner will continue to be deprived of an appropriate resolution to her petition seeking redress for her wrongful discharge.

**WHEREFORE**, the Petitioner, Ms. Tina Clark, respectfully requests that this Honorable Court issue a rule in Mandamus directing the Respondent, the Honorable Judge Mark A. Karl, to discharge his duty under the law and either transfer her case to another court in the First or Second Circuit, that is able to expeditiously adjudicate her claim, or request this Court to appoint a judge, either active or retired, to try her case. The Petitioner further respectfully requests that this Court order the Respondent to issue an order, with factual support, to show cause why this Writ of Mandamus ought not be granted and that the Petitioner be awarded any other relief that this Court deems fit and just.

TINA CLARK, Petitioner,

By

Of Counsel

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IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

TINA CLARK,

Petitioner,

v.

THE HONORABLE MARK A. KARL,  
JUDGE OF THE CIRCUIT COURT  
OF MARSHALL COUNTY, WEST  
VIRGINIA, 2<sup>nd</sup> JUDICIAL DISTRICT,

Respondent.

SUPREME COURT NO. \_\_\_\_\_

UNDERLYING CIVIL ACTION  
NO. 03-C-56K  
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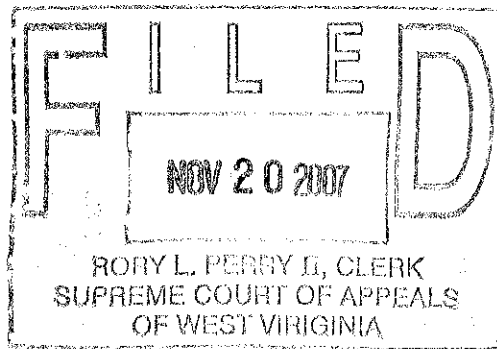
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MEMORANDUM IN SUPPORT OF PETITION FOR WRIT OF MANDAMUS

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## TABLE OF CONTENTS

	<u>Page</u>
TABLE OF CONTENTS .....	I
TABLE OF CASES AND AUTHORITIES .....	ii-iii
I. INTRODUCTION .....	1
II. PROCEDURAL HISTORY AND STATEMENT OF FACTS .....	1-3
III. JURISDICTION .....	4
IV. STANDARD FOR ISSUANCE OF WRIT OF MANDAMUS .....	4-5
V. ARGUMENT .....	5-11
A. The Petitioner Has a Clear Legal Right to Have Her Suit Adjudicated. ....	5
B. The Respondent Has a Clear Duty to Timely Adjudicate the Petitioner's Suit. ....	5-6
1. The Respondent has failed in his duty to expeditiously adjudicate without unnecessary delay. ....	6-8
2. The Respondent's failure to adjudicate expeditiously has caused the Petitioner unnecessary cost to litigate her claim. ....	8-9
C. Mandamus Is the Exclusive Remedy Available for the Petitioner. ....	10-11
VI. REQUEST FOR RELIEF .....	11
SCHEDULE OF EXHIBITS .....	12
MEMORANDUM OF PERSONS TO BE SERVED .....	13
CERTIFICATE OF SERVICE .....	14

## **II. TABLE OF CASES AND AUTHORITIES**

<b><u>Cases</u></b>	<b><u>Page</u></b>
<i>Cathe A. v. Doddridge County Bd. of Educ.</i> , 200 W. Va. 521, 490 S.E.2d 340 (1997) .....	4
<i>Delardas v. County Court of Monongalia County</i> , 155 W. Va. 776, 186 S.E.2d 847 (1972) .....	4
<i>Gas Co. v. DeBerry</i> , 130 W. Va. 418, 43 S.E.2d 408 (1947) .....	10
<i>Hickman v. Epstein</i> , 192 W. Va. 42, 450 S.E.2d 406 (1994) .....	5
<i>Phillip Leon M. v. Greenbrier County Bd. of Educ.</i> , 199 W. Va. 400, 484 S.E.2d 909 (1996) .....	4
<i>State ex rel. Allstate Ins. Co. v. Union Pub. Serv. Dist.</i> , 151 W. Va. 207, 151 S.E.2d 102 (1966) .....	4
<i>State ex rel. Blankenship v. Richardson</i> , 196 W. Va. 726, 474 S.E.2d 906 (1996) .....	4
<i>State ex rel. Judy v. Kiger</i> , 153 W. Va. 764, 767-68, 172 S.E.2d 579, 581 (1970). ....	
<i>State ex rel. Kucera v. City of Wheeling</i> , 153 W. Va. 538, 170 S.E.2d 367 (1969) .....	4
<i>State ex rel. McGraw v. West Virginia Ethics Com'n</i> , 200 W. Va. 723, 490 S.E.2d 812 (1997) .....	5
<i>State ex rel. Warner v. Jefferson County Comm'n</i> , 198 W. Va. 667, 673, 482 S.E.2d 652, 658 (1996) .....	4
<b><u>Statutory Provisions</u></b>	
W. VA. CODE ANN. § 51-1-3 (2007) .....	4
<b><u>Rules</u></b>	
W. VA. CODE OF JUDICIAL CONDUCT CANON 3B(8) (2007) .....	5
W. VA. R. APP. PROC. 14(a) (2007) .....	4

W. VA. TR. CT. R. 4.04 .....	2
W. VA. TR. CT. R. 5.02 (2007) .....	7
W. VA. TR. CT. R. 16.05 (2007) .....	6, 7

### **Constitutional Authority**

W. VA. CONST. art. III, § 17 .....	5
W. VA. CONST. art. VIII, § 3 .....	4

### **Secondary Authority**

S. Merrill, <i>Law of Mandamus</i> § 186 (1892) .....	10
W. VA. CODE OF JUDICIAL CONDUCT Canon 3B(8) cmt. (2007) .....	5-6



## **I. INTRODUCTION**

This is a proceeding in which the Petitioner is seeking to compel the Respondent to grant the Petitioner her motion either to transfer her civil action to another court, in the First or Second Judicial Districts, that will adjudicate her suit more expeditiously, or to request this Court to appoint a judge, either active or retired, to adjudicate her case.

## **II. PROCEDURAL HISTORY AND STATEMENT OF FACTS**

The Petitioner filed her original Complaint against Valley National Gases, Inc., on March 3, 2003, asserting claims for wrongful discharge, discrimination, deliberate intent, wage payment violations and fraud. Over the last four plus years, the Petitioner's case has been set for trial on six separate occasions, but has yet to proceed to trial. Following the sixth trial continuance, the matter has not been rescheduled for trial, despite the fact that the Respondent assured the litigants that trial would be set within the month of September, and despite the fact that the Respondent granted, on December 1, 2006, the Petitioner's Motion for Trial Date Preference which was requested after the fourth continuance. On August 21, 2007, however, instead of setting the trial for September, the Respondent offered the litigants a choice between trying this case during Thanksgiving week or a seven-month postponement to March of 2008. Defense counsel rejected both dates, and the Respondent has not rescheduled the trial.

Given the multiple continuances, none of which were requested by the Petitioner, and the lack of assurance that any future trial date will hold, the Petitioner respectfully requested, on August 23, 2007, that the Respondent immediately transfer her civil action to another judge in either the Second or First Judicial Circuits, or request that this Honorable Court appoint a judge, either active or retired, to try her case. On September 26, 2007, after the Defendant filed a response to the

Petitioner's Motion to Transfer and the Petitioner filed a Sur-reply, the litigants appeared before the Respondent and orally argued the Motion to Transfer. Respondent directed the parties to submit proposed Orders on the Motion, but did not rule at the hearing. As of the filing of this petition, the Respondent has not issued a ruling on the Motion.

As further grounds for this petition, the Petitioner sets forth the following procedural history of this case:

1. **September 13, 2004 trial date.** The original Complaint was filed in March of 2003, and the first trial date was set for September 2004. In May of 2004, shortly after the pre-trial conference, the Defendant hired new counsel.<sup>1</sup> One of the first actions taken by new counsel was to request a continuance of the trial date, which was still four months away. The Petitioner objected to this blatant violation of the Trial Court Rules (Rule 4.04), and the Respondent denied the Motion. The first scheduled trial date was September 13, 2004. Days before the trial was to start, the Respondent had a scheduling conflict due to a criminal matter, and postponed the trial date. When the matter was postponed, the Respondent indicated the trial would be quickly reset. Three days later, the Defendant improperly removed the case to Federal Court. The District Court remanded the matter on April 5, 2005, noting the attempted removal was completely without merit.
2. **October 24, 2005 trial date.** Following remand, the case was again set for trial on October 24, 2005. This second scheduled trial date was continued by the Respondent on October 10, 2005, due to a court scheduling conflict.
3. **March 13, 2006 trial date.** A third trial date was then set for March 13, 2006. At what was to be the final pre-trial conference, the Defendant moved for a continuance because its human resources director had scheduled elective surgery to coincide with the time of the trial. Despite the fact that ample time existed to schedule the evidentiary deposition of this witness, the Respondent granted the Defendant's request for a continuance over the Petitioner's objection.
4. **November 27, 2006 trial date.** The matter was then set for its fourth trial date on November 27, 2006. The case, however, was placed second on the docket behind another civil matter. Several weeks prior to this trial date, the Respondent indicated that the first civil matter had not resolved, and that a criminal matter existed that

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<sup>1</sup> This was Defendant's second trial counsel, the law firm of Jackson Lewis, and not Defendants' current counsel.

would take precedence. Thus, the Respondent continued the Petitioner's fourth trial date.

5. **March 5, 2007 trial date.** When the Respondent set the fourth trial date in this matter, it also gave a back-up date in case something happened to prevent the November, 2006, date from going forward. The back-up trial date was March 5-16, 2007. After the fourth continuance, the Petitioner filed a Motion for Trial Date Preference, requesting that her case be given preference over any other civil matter pending on the Respondent's docket. The Respondent granted this Motion at a hearing, as is reflected in the Respondent's Order of December 1, 2006. Nevertheless, Respondent continued the fifth trial date on February 23, 2007, due to a scheduling conflict.
6. **August 15, 2007 trial date.** Immediately after receiving notification of the continuance of the March 5, 2007, trial date, the Petitioner filed a Motion for Expedited Hearing and Trial Preference. The Respondent then set the matter for trial on Wednesday, August 15, 2007. On Friday, August 10, 2007, the Respondent held a telephonic hearing informing the litigants that a criminal case was scheduled on August 13, 2007 that he expected would go over into Wednesday, August 15, 2007; and thus, the Respondent continued the sixth trial date, due to another scheduling conflict.
7. **September 2007 trial date.** In the telephonic hearing in which the August 15, 2007 trial date was continued, the Respondent asked the litigants when they could retry the matter, and it was agreed that September would be acceptable. The Respondent indicated he would check the docket and contact the parties the week of August 13<sup>th</sup> with a new trial date sometime in the month of September. During the week of August 13<sup>th</sup>, Petitioner's counsel contacted the Circuit Court to discover when in September the trial was to be scheduled. Instead of receiving a date, Petitioner's counsel discovered that the defendant in the criminal case which had presented the conflict, entered a plea agreement - thus the criminal matter did not present a conflict for the August 15, 2007 trial date.

On August 21, 2007, the Respondent issued a letter stating no trial dates were available until the week of Thanksgiving, 2007, or **March 24, 2008**. Defense counsel advised that he was unavailable for either date, and the Respondent did not set the matter for trial.

As of this date, the Petitioner's case has not been set for trial, even though she has been ready to proceed since September of 2004. These continued delays create further damage, prejudice and extreme hardship for the Petitioner.

### III. JURISDICTION

This Court has jurisdiction over Mandamus actions pursuant to Article VIII, § 3 of the Constitution of the State of West Virginia. *See also* W. VA. CODE Ann. § 51-1-3 (2007) (“The supreme court of appeals shall have original jurisdiction in cases of . . . mandamus . . .”). Moreover, Rule 14(a) of the West Virginia Rules of Appellate Procedure recognizes this Court’s jurisdiction.

### IV. STANDARD FOR ISSUANCE OF WRIT OF MANDAMUS

“Mandamus is a proper proceeding by which to compel a public officer to perform a mandatory, nondiscretionary legal duty.” Syl. Pt. 3, *Delardas v. County Court of Monongalia County*, 155 W. Va. 776, 186 S.E.2d 847 (1972). *Accord* *State ex rel. Warner v. Jefferson County Comm’n*, 198 W. Va. 667, 673, 482 S.E.2d 652, 658 (1996); *see also* Syl. Pt. 1, *State ex rel. Allstate Ins. Co. v. Union Pub. Serv. Dist.*, 151 W. Va. 207, 151 S.E.2d 102 (1966) (“Mandamus is a proper remedy to require the performance of a nondiscretionary duty by various governmental agencies or bodies.”).

To prevail in a request for a writ of mandamus, “three elements must coexist – (1) a clear legal right in the petitioner to the relief sought; (2) a legal duty on the part of respondent to do the thing which the petitioner seeks to compel; and (3) the absence of another adequate remedy.” Syl. Pt. 2, *State ex rel. Kucera v. City of Wheeling*, 153 W. Va. 538, 170 S.E.2d 367 (1969). *Accord*, Syl. Pt. 5, *Phillip Leon M. v. Greenbrier County Bd. of Educ.*, 199 W. Va. 400, 484 S.E.2d 909 (1996), *modified in part*, *Cathe A. v. Doddridge County Bd. of Educ.*, 200 W. Va. 521, 490 S.E.2d 340 (1997); Syl. Pt. 2, *State ex rel. Blankenship v. Richardson*, 196 W. Va. 726, 474 S.E.2d 906 (1996);

Syl. Pt. 1, *Hickman v. Epstein*, 192 W. Va. 42, 450 S.E.2d 406 (1994); Syl. Pt. 1, *State ex rel. McGraw v. West Virginia Ethics Com'n*, 200 W. Va. 723, 490 S.E.2d 812 (1997).

## V. ARGUMENT

This Court ought to grant the Petitioner's request for a Writ of Mandamus against the Respondent because: (A) the Petitioner has a clear legal right to have her underlying civil action adjudicated in a timely manner without undue delay, (B) the Respondent has a clear duty as a circuit court judge to timely adjudicate civil actions properly submitted to his court, and (C) no alternative remedy exists for the Petitioner.

### A. The Petitioner Has a Clear Legal Right to Have Her Suit Adjudicated.

Article III, § 17 of the Constitution of the State of West Virginia provides, "[t]he courts of this State shall be open, and every person, for an injury done unto him, in his person, property or reputation shall have remedy by due course of law; and justice shall be administered without sale, denial, or *delay*." (Emphasis added).

### B. The Respondent Has a Clear Duty to Timely Adjudicate the Petitioner's Suit.

The Respondent has a duty to resolve, without unnecessary delay or cost, the issues that the Petitioner has brought before him and to expeditiously determine matters that the Petitioner has submitted. *See* W. VA. CODE OF JUDICIAL CONDUCT Canon 3B(8) (2007). Canon 3B(8) of the West Virginia Code of Conduct specifically provides, "[a] judge shall dispose of all judicial matters promptly, efficiently, and fairly." The commentary to Canon 3B(8) explains,

In disposing of matters promptly, efficiently, and fairly, a judge must demonstrate due regard for the rights of the parties to be heard and to have issues resolved *without unnecessary cost or delay*. . . . A judge should monitor and supervise cases so as to reduce or eliminate dilatory practices, avoidable delays, and unnecessary costs. . . .

Prompt disposition of the court's business requires a judge to devote adequate time to judicial duties, to be punctual in attending court, and *expeditious in determining matters under submission*, and to insist that court officials, litigants, and their lawyers cooperate with the judge to that end.

W. VA. CODE OF JUDICIAL CONDUCT Canon 3B(8) cmt. (2007) (emphasis added).

1. **The Respondent has failed in his duty to expeditiously adjudicate without unnecessary delay.**

West Virginia's Trial Court Rule 16.05 states, "final judgment shall be entered in general civil cases within eighteen (18) months of the filing of the complaint." By March of 2008 – one of the proposed dates that the Respondent offered for rescheduling of the Petitioner's trial –, this matter will be five years beyond the filing of the complaint. In addition, several Motions are pending in the Respondent's court, including the Petitioner's Motion for Partial Summary Judgment and Motion to Transfer.

The Respondent has continued this matter on seven separate occasions: once, because of an improper removal by the Defendant, once, because of the scheduling of elective surgery by one of Defendant's witnesses, once when the Defendant rejected proposed trial dates, and four times due to the Respondent's scheduling conflicts. Wednesday, August 15, 2007, was the last scheduled trial date for the Petitioner's civil suit. Despite the fact that on December 1, 2006, after four continuances, the Respondent granted the Petitioner's Motion for Trial Date Preference, on Friday, August 10, 2007, the Respondent held a telephonic hearing informing the litigants that a criminal case was scheduled for Monday, August 13, 2007, and that the Respondent expected it would go

over into Wednesday, August 15, 2007; and thus, the Respondent continued the trial for the sixth time.<sup>2</sup>

In the telephonic hearing, it was agreed that September would be an acceptable date to reschedule, and that the Respondent would contact the parties the week of August 13<sup>th</sup> with a new trial date sometime in the month of September. When Petitioner's counsel contacted the Circuit Court the week of August 13<sup>th</sup>, counsel was advised that the defendant in the criminal case which had presented the conflict, entered a plea agreement prior to his trial, and in fact the criminal case did not create an actual conflict for the August 15, 2007 trial date.

Moreover, on August 21, 2007, the Respondent issued a letter stating no trial dates were available in September or October. Instead, the Respondent offered the litigants a choice between a trial date in the week of Thanksgiving, 2007, or **March 24, 2008**. Defense counsel indicated that he was unavailable for both the November and March trial and the Respondent did not schedule, nor offer new dates, for trial.

**2. The Respondent's failure to adjudicate expeditiously has caused the Petitioner unnecessary cost to litigate her claim.**

Irrespective of the causes of the numerous delays, the end result has been prejudice and unnecessary cost to the Petitioner. For example, while the matter was delayed, the Defendant admitted to smashing critical computers with a sledgehammer. The Petitioner's father, who would

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<sup>2</sup>While the Petitioner acknowledges that Trial Court Rule 5.02 would grant a preference to criminal felony trials when a scheduling conflict arises, a balance must exist which permits the fair and expeditious adjudication of civil cases, otherwise Trial Court Rule 16.05, which requires civil cases to be adjudicated within 18 months, would be a nullity. *See* W. VA. TR. CT. R. 5.02 (2007) ("In resolving scheduling conflicts the following priorities should ordinarily prevail: . . . (b) criminal felony trials should prevail over civil trials . . ."). Moreover, the conflict should actually arise, not merely be anticipated before a civil trial date is rescheduled.

have been a witness in her case, passed away. In addition, key witnesses have left Valley's employ and left the area. This has resulted in added expense for the Petitioner. For example, the Petitioner had to file a miscellaneous action in Allegheny County to subpoena Dan Bauer (Valley's former Human Resources employee).

In November of 2006, Valley announced plans to sell the company to an out of state business interest. The sale, for over \$240 million, took place in 2007, and with each day under new ownership, there is a possibility that additional local managers and employees will be relocated or terminated – and witnesses will be lost.

The Petitioner has also been prejudiced by having to put on much of her case via video depositions. Each time this matter is set for trial, there is the potential that an expert may not be available to attend the trial in person. Whenever that has happened, the Petitioner has been forced to take an evidentiary deposition. Thus, giving the Defendant her case piece by piece over the years. These numerous stops and starts have also resulted in significant expense for the Petitioner. Each time, experts must get back up to speed on the case, or update opinions. This has cost the Petitioner thousands of dollars. The delays have also been unfair to Petitioner's counsel and the staff of their law firm, who have expended hundreds of hours preparing and re-preparing for trial – which means hours that are taken away from other cases.

The Petitioner has endured the stress and significant expense of preparing for trial on six separate occasions. She has been denied her day in court, to hold the Defendant accountable for its actions, for over four and a half years. Instead of being able to put this matter behind her and move on with her life, she is constantly dragged back to the events leading to her wrongful discharge. Just



as troubling is that the Petitioner has lost faith in our system of justice. Each time the trial is delayed, it is as if her former employer has won a victory.

Finally, the delay of the underlying case is also delaying the development and trial of the Petitioner's second case – her claims against Valley for abuse of process and intentional infliction of emotional distress, and her claims against St. Paul and Royal Insurance Companies for bad faith, abuse of process and intentional infliction of emotional distress. That Complaint was filed in March of 2005.

Thus, the Respondent has failed in his duty to adjudicate the Petitioner's wrongful discharge suit in an expeditious manner, within 18 months of her suit's commencement in March of 2003, without unnecessary delay and cost. The Respondent's failure of this duty has not only caused the Petitioner unnecessary expense in her attempt to seek a remedy for, inter alia, the Defendant's wrongful termination of her employment, but has also prejudiced her case with the loss of evidence and witnesses.

**C. Mandamus Is the Exclusive Remedy Available for the Petitioner.**

Although Mandamus is an improper remedy for seeking to compel a judge to act in a manner that is within his/her judicial discretion, Mandamus is the proper and exclusive remedy for compelling a judge to perform his non-discretionary duty. *See* Syl. Pt. 2, *GASCO. v. DeBERRY*, 130 W. Va. 418, 43 S.E.2d 408 (1947) (“The manner in which judicial discretion of a court of record, or the judge thereof, is exercised will not be controlled by mandamus. But if such court, or judge, fails or refuses to act, mandamus lies to compel the exercise of such discretion.”). As explained by one Commentator,

When a duty is imposed by law upon a court a *mandamus* from a higher court is the proper means to compel the discharge of such duty. When such duty is so plain in point of law and so clear in matter of fact that no element of discretion is left as to the precise mode of its performance such duty is ministerial, and a writ of *mandamus* to compel the performance of such duty will specify the exact mode of performance.

S. Merrill, *Law of Mandamus* § 186 (1892), *quoted in, State ex rel. Judy v. Kiger*, 153 W. Va. 764, 767-68, 172 S.E.2d 579, 581 (1970).

Petitioner's Counsel has repeatedly attempted to obtain a trial date via motions, phone calls to the Marshall County Courthouse, and hearings, as well as obtaining a Trial Date Preference Order on December 1, 2006, and taking the extraordinary measure of requesting the Respondent transfer her case. All of these attempts have been futile. More than three months have passed since the last continuance and this case is still not set for trial. No other adequate remedy is available to the Petitioner to compel the Respondent to perform his duty in adjudicating the Petitioner's civil action. The Respondent's delay has resulted in prejudice to the Petitioner and unnecessary cost in litigating her claim. Because the Respondent has a clear duty as a Circuit Court Judge to timely adjudicate civil actions properly submitted to his Court, and because the Petitioner has a clear legal right to have her underlying civil action adjudicated in a timely manner without undue delay, and because no alternative remedy exists for the Petitioner to compel the Respondent to perform his duty, this Court should grant the Petitioner her Writ of Mandamus.

## **VI. REQUEST FOR RELIEF**

**WHEREFORE**, as the Respondent has been unable to perform his duty in expeditiously ruling on various motions submitted to him, and in expeditiously scheduling and holding a the trial of this matter, without unnecessary delay and cost, the Petitioner hereby takes the extreme measure of petitioning this Honorable Court to issue a rule ordering the Respondent to show cause why the

Petitioner's Writ of Mandamus ought not be granted, and specifically why the Respondent ought not grant the Petitioner's Motion to Transfer this matter to another judge in the First and Second Circuits for adjudication. If, however, no judge in those circuits has time to expeditiously adjudicate this matter, the Petitioner requests this Court to appoint a judge, either active or retired to try this case. Furthermore, the Petitioner requests any other relief that this Court deems fit and proper.

TINA CLARK, PETITIONER

By   
Of counsel for Petitioner

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Sandra K. Law, Esq. (WV ID #6071)  
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#### **SCHEDULE OF EXHIBITS**

Order of December 1, 2006, granting Plaintiff's Motion for Preference.

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

TINA CLARK,

Petitioner,

v.

THE HONORABLE MARK A. KARL,  
JUDGE OF THE CIRCUIT COURT  
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Respondent.

SUPREME COURT NO. \_\_\_\_\_

UNDERLYING CIVIL ACTION  
NO. 03-C-56K  
(JUDGE MARK A. KARL)

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MEMORANDUM OF PERSON TO BE SERVED

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If granted, the rule to show cause should be served upon the Honorable Mark A. Karl, Circuit Court Judge of the Second Judicial Circuit, Marshall County Courthouse, Seventh Street, Moundsville, West Virginia, 26041.

TINA CLARK, PETITIONER

By   
Of counsel for Petitioner

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*Attorneys for the Petitioner*

**CERTIFICATE OF SERVICE**

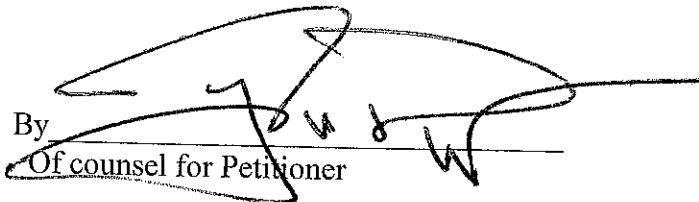
I hereby certify that a true and correct copy of the foregoing **PETITION FOR WRIT OF MANDAMUS, MEMORANDUM IN SUPPORT OF PETITION FOR WRIT OF MANDAMUS, and MEMORANDUM OF PERSON TO BE SERVED** were served on the Respondent, the Honorable Judge Mark A. Karl, via first-class mail, postage prepaid, this **15th** day of **November, 2007**, addressed as follows:

Hon. Mark A. Karl, Judge  
Circuit Court of Marshall County  
Marshall County Courthouse  
Seventh Street  
Moundsville, West Virginia 26041

Furthermore, I certify that the original and nine copies of the foregoing **PETITION FOR WRIT OF MANDAMUS, MEMORANDUM IN SUPPORT OF PETITION FOR WRIT OF MANDAMUS, and MEMORANDUM OF PERSON TO BE SERVED** were served upon the following, via first-class mail, postage prepaid, this **15th** day of **November, 2007**:

Mr. Rory L. Perry, II, Clerk  
West Virginia Supreme Court of Appeals  
State Capitol Complex  
1900 Kanawha Boulevard East  
Charleston, West Virginia 25305

TINA CLARK, PETITIONER

By   
Of counsel for Petitioner

Frank X. Duff, Esq. (WV ID #1076)  
Sandra K. Law, Esq. (WV ID #6071)  
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The Maxwell Centre - Suite 500  
32-20th Street  
Wheeling, WV 26003  
(304) 233-3390

## **SCHEDULE OF EXHIBITS**

IN THE CIRCUIT COURT OF MARSHALL COUNTY, WEST VIRGINIA

TINA CLARK

Plaintiff,

vs.

VALLEY NATIONAL GASES, INC.,  
a corporation

Defendant.

Civil Action No. 03-C-56K  
Judge Mark A. Karl

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**ORDER**  
**ON PLAINTIFF'S MOTION FOR TRIAL DATE PREFERENCE**  
**AND EXPEDITED RULINGS ON PENDING MOTIONS**

The plaintiff filed a Motion for Trial Date Preference and Expedited Rulings on Pending Motions on November 17, 2006. The defendant did not file a written response to the Motion. A hearing was held on this Motion before the Honorable Judge Mark A. Karl on December 1, 2006. Upon reviewing the Motion and hearing arguments on the matter, the Court hereby ORDERS as follows:

The Court GRANTS the plaintiff's Motion for Trial Date Preference, and this case is hereby set for trial on MARCH 5, 2007 <sup>AT 9:00 A.M.</sup>, and will be placed first on the docket.

The Court GRANTS the plaintiff's Motion for Expedited Rulings on Pending Motions, and Orders on the pending motions will be entered on or before JANUARY 4, 2007.

The Court hereby Orders the Clerk to transmit certified copies of this Order to all counsel of record.

Entered this 15<sup>th</sup> day of December, 2006.

Mark A. Karl  
The Honorable Mark A. Karl

Prepared By:

Frank X. Duff, Esq. (WV #1065)  
Sandra K. Law, Esq.. (WV Id. # 6071)  
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(304) 233-3390  
Counsel for Plaintiff

D. J. R. Laly, Clerk

By Sandra K. Law Deputy